



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/576,962

01/12/2007

Lorenzo Panella

09728.0368USWO

2798

23552 7590 09/08/2008
MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

EXAMINER

PANI, JOHN

ART UNIT

PAPER NUMBER

3736

MAIL DATE

DELIVERY MODE

09/08/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/576,962	Applicant(s) PANELLA ET AL.	
	Examiner JOHN PANI	Art Unit 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 6/13/2008 have been fully considered but they are not persuasive. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the Examiner notes that both Lombardi (see pgs. 403-404, 3rd paragraph in "Introduction") and Westhead (see pgs. 2-3 for example) are directed towards assessing motor function during transition from a standing position to a sitting position. Furthermore Westhead teaches, regarding the benefits in including sensors for measuring force applied by the hand in a system for analyzing balance in a patient moving from sitting to standing position, that "the horizontal force...is an enhancement to indicate the force the patient is using to pull himself forward" (pg. 8 lines 5-10), thus teaching that the measurement of this horizontal force is clinically significant and providing motivation to one of ordinary skill in the art to include such sensors in a system for monitoring balance function during the transition from standing to sitting.
2. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that

Art Unit: 3736

any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

3. In response to Applicant's argument that "the present system provides non-obvious differences and advantages over the prior art or any combination thereof", the Examiner submits that this is mere conjecture in the absence of substantial supporting evidence.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 7, 10, 13, 16-19, 21, and 23-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Measurement on Tinetti test: Instrumentation and procedures" to Lombardi et al. ("Lombardi") in view of GB 2 357 848 to Westhead et al. ("Westhead").

6. Please see Office Action of 12/13/2007 for content of rejection.

Art Unit: 3736

7. Claims 2 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lombardi and Westhead as applied to claim 1 above, and further in view of US 2002/0055691 to Tasch et al. ("Tasch").

8. Please see Office Action of 12/13/2007 for content of rejection.

9. Claims 3 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lombardi in view of Westhead as applied to claim 1 above, and further in view of US 2003/0181832 to Carnahan et al. ("Carnahan").

10. Please see Office Action of 12/13/2007 for content of rejection.

11. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lombardi in view of Westhead as applied to claim 1 above, and further in view of WO 02/090901 to Orlewski ("Orlewski").

12. Please note that US 2004/0183688 to Orlewski is considered an English equivalent and will be referenced herein. See MPEP § 901.05 (d) [R-5].

13. Please see Office Action of 12/13/2007 for content of rejection.

14. Claims 4, 11, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lombardi in view of Tasch.

15. Please see Office Action of 12/13/2007 for content of rejection.

Art Unit: 3736

16. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lombardi in view of Tasch as applied to claim 4 above, and further in view of Carnahan.

17. Please see Office Action of 12/13/2007 for content of rejection.

18. Claims 6, 12, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lombardi in view of Carnahan.

19. Please see Office Action of 12/13/2007 for content of rejection.

Conclusion

20. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHN PANI whose telephone number is (571)270-1996. The examiner can normally be reached on Monday-Friday 7:30 am - 5:00 pm EST.

Art Unit: 3736

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JP 9/4/08

/Max Hindenburg/
Supervisory Patent Examiner, Art Unit 3736